

SENATE BILL NO. 872

February 10, 1998, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"An act to establish a revenue division of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to create the position and to define the powers and duties of the state commissioner of revenue; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act,"

by amending section 28 (MCL 205.28), as amended by 1993 PA 13, and by adding section 30c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 28. (1) The following conditions apply to all taxes
2 administered under this act unless otherwise provided for in the
3 specific tax statute:

4 (a) Notice, if required, shall be given either by personal
5 service or by certified mail addressed to the last known address
6 of the taxpayer. Service upon the commissioner may be made in
7 the same manner.

8 (b) An injunction shall not issue to stay proceedings for
9 the assessment and collection of a tax.

10 (c) In addition to the mode of collection provided in this
11 act, the department may institute an action at law in any county
12 in which the taxpayer resides or transacts business.

13 (d) The commissioner may request in writing information or
14 records in the possession of any other department, institution,
15 or agency of state government for the performance of duties under
16 this act. Departments, institutions, or agencies of state gov-
17 ernment shall furnish the information and records upon receipt of
18 the commissioner's request. Upon request of the commissioner,
19 any department, institution, or agency of state government shall
20 hold a hearing under the administrative procedures act of 1969,
21 ~~Act No. 306 of the Public Acts of 1969, as amended, being sec-~~
22 ~~tions 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA
23 306, MCL 24.201 TO 24.328, to consider withholding a license or
24 permit of a person for nonpayment of taxes or accounts collected
25 under this act.

26 (e) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 30C, THE
27 commissioner or an employee of the department shall not

1 compromise or reduce in any manner the taxes due to or claimed by
2 the state or unpaid accounts or amounts due to any department,
3 institution, or agency of state government. This subdivision
4 does not prevent a compromise of interest or penalties, or both.

5 (f) Except as otherwise provided in this subdivision, an
6 employee, authorized representative, or former employee or autho-
7 rized representative of the department or anyone connected with
8 the department shall not divulge any facts or information
9 obtained in connection with the administration of a tax or infor-
10 mation or parameters that would enable a person to ascertain the
11 audit selection or processing criteria of the department for a
12 tax administered by the department. A person may disclose infor-
13 mation described in this subdivision if the disclosure is
14 required for the proper administration of a tax law administered
15 under this act, pursuant to a judicial order sought by an agency
16 charged with the duty of enforcing or investigating support obli-
17 gations pursuant to an order of a court in a domestic relations
18 matter as that term is defined in section 31 of the friend of the
19 court act, ~~Act No. 294 of the Public Acts of 1982, being section~~
20 ~~552.531 of the Michigan Compiled Laws~~ 1982 PA 294, MCL 552.531,
21 or pursuant to a judicial order sought by an agency of the feder-
22 al, state, or local government charged with the responsibility
23 for the administration or enforcement of criminal law for pur-
24 poses of investigating or prosecuting criminal matters or for
25 federal or state grand jury proceedings or a judicial order if
26 the taxpayer's liability for a tax administered under this act is
27 to be adjudicated by the court that issued the judicial order.

1 However, the commissioner or a person designated by the
2 commissioner may divulge information set forth or disclosed in a
3 return or report or by an investigation or audit to any depart-
4 ment, institution, or agency of state government upon receipt of
5 a written request from a head of the department, institution, or
6 agency of state government if it is required for the effective
7 administration or enforcement of the laws of this state, to a
8 proper officer of the United States department of treasury, and
9 to a proper officer of another state reciprocating in this
10 privilege. The commissioner may enter into reciprocal agreements
11 with other departments of state government, the United States
12 department of treasury, local governmental units within this
13 state, or taxing officials of other states for the enforcement,
14 collection, and exchange of data after ascertaining that any
15 information provided will be subject to confidentiality restric-
16 tions substantially the same as the provisions of this act.

17 (2) A person who violates subsection (1)(e) or (1)(f) is
18 guilty of a felony, punishable by a fine of not more than
19 \$5,000.00, or imprisonment for not more than 5 years, or both,
20 together with the costs of prosecution. In addition, if the
21 offense is committed by an employee of this state, the person
22 shall be dismissed from office or discharged from employment upon
23 conviction.

24 (3) A person liable for any tax administered under this act
25 shall keep accurate and complete records necessary for the proper
26 determination of tax liability as required by law or rule of the
27 department.

1 SEC. 30C. (1) THE COMMISSIONER, OR AN AUTHORIZED
2 REPRESENTATIVE OF THE COMMISSIONER, ON BEHALF OF THE DEPARTMENT,
3 MAY ENTER INTO A VOLUNTARY DISCLOSURE AGREEMENT WITH A PERSON TO
4 BRING NONFILERS INTO COMPLIANCE FOR TAXES DUE TO OR CLAIMED BY
5 THIS STATE.

6 (2) ALL TAXES AND FEES ADMINISTERED UNDER THIS ACT ARE ELI-
7 GIBLE FOR INCLUSION IN A VOLUNTARY DISCLOSURE AGREEMENT.

8 (3) TO BE ELIGIBLE FOR A VOLUNTARY DISCLOSURE AGREEMENT, A
9 PERSON MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

10 (A) HAS HAD NO PREVIOUS CONTACT BY THE DEPARTMENT OR ITS
11 AGENTS, INCLUDING THE MULTISTATE TAX COMMISSION, REGARDING A TAX
12 COVERED BY THE AGREEMENT.

13 (B) HAS HAD NO NOTIFICATION OF AN IMPENDING AUDIT BY THE
14 DEPARTMENT OR ITS AGENTS, INCLUDING THE MULTISTATE TAX
15 COMMISSION.

16 (C) IS NOT CURRENTLY UNDER AUDIT BY THE DEPARTMENT OF TREA-
17 SURY OR UNDER INVESTIGATION BY THE DEPARTMENT OF STATE POLICE,
18 DEPARTMENT OF ATTORNEY GENERAL, OR ANY LOCAL LAW ENFORCEMENT
19 AGENCY REGARDING A TAX COVERED BY THE AGREEMENT.

20 (D) IS NOT CURRENTLY THE SUBJECT OF A CIVIL ACTION OR A
21 CRIMINAL PROSECUTION INVOLVING ANY TAX COVERED BY THE AGREEMENT.

22 (E) HAS AGREED TO REGISTER, FILE RETURNS, AND PAY ALL TAXES
23 DUE IN ACCORDANCE WITH ALL APPLICABLE LAWS OF THIS STATE FOR ALL
24 TAXES ADMINISTERED UNDER THIS ACT FOR ALL PERIODS AFTER THE LOOK-
25 BACK PERIOD.

26 (F) HAS AGREED TO PAY ALL TAXES DUE FOR EACH TAX COVERED
27 UNDER THE AGREEMENT FOR THE LOOKBACK PERIOD, PLUS STATUTORY

1 INTEREST AS STATED IN SECTION 23, WITHIN THE PERIOD OF TIME AND
2 IN THE MANNER SPECIFIED IN THE AGREEMENT.

3 (G) HAS AGREED TO FILE RETURNS AND WORKSHEETS FOR THE LOOK-
4 BACK PERIOD AS SPECIFIED IN THE AGREEMENT.

5 (H) HAS AGREED TO ALL OTHER TERMS AND CONDITIONS SPECIFIED
6 BY THE COMMISSIONER, OR AN AUTHORIZED REPRESENTATIVE OF THE COM-
7 MISSIONER, ON BEHALF OF THE DEPARTMENT, IN THE AGREEMENT.

8 (4) IF A PERSON SATISFIES ALL REQUIREMENTS STATED IN SUBSEC-
9 TION (3), THE DEPARTMENT MAY ENTER INTO A VOLUNTARY DISCLOSURE
10 AGREEMENT WITH THAT PERSON PROVIDING THE FOLLOWING RELIEF:

11 (A) NOTWITHSTANDING SECTION 28(1)(E) OF THIS ACT, THE
12 DEPARTMENT SHALL NOT ASSESS ANY TAX, DELINQUENCY FOR A TAX, PEN-
13 ALTY, OR INTEREST COVERED UNDER THE AGREEMENT FOR ANY PERIOD
14 BEFORE THE LOOKBACK PERIOD IDENTIFIED IN THE AGREEMENT.

15 (B) THE DEPARTMENT SHALL NOT ASSESS ANY APPLICABLE DISCRE-
16 TIONARY OR NONDISCRETIONARY PENALTIES FOR THE LOOKBACK PERIOD.

17 (C) THE DEPARTMENT SHALL PROVIDE COMPLETE CONFIDENTIALITY OF
18 THE AGREEMENT AND SHALL ALSO ENTER INTO AN AGREEMENT NOT TO DIS-
19 CLOSE, IN ACCORDANCE WITH SECTION 28(1)(F), ANY OF THE TERMS OR
20 CONDITIONS OF THE AGREEMENT TO ANY TAX AUTHORITIES OF ANY STATE
21 OR GOVERNMENTAL AUTHORITY OR TO ANY PERSON EXCEPT AS REQUIRED BY
22 EXCHANGE OF INFORMATION AGREEMENTS AUTHORIZED UNDER SECTION
23 28(1)(F), INCLUDING THE INTERNATIONAL FUEL TAX AGREEMENT UNDER
24 CHAPTER 317 OF TITLE 49 OF THE UNITED STATES CODE, 49
25 U.S.C. 31701 TO 31708. THE DEPARTMENT SHALL NOT EXCHANGE INFOR-
26 MATION OBTAINED UNDER THIS SECTION WITH OTHER STATES REGARDING
27 THE PERSON UNLESS SPECIFICALLY REQUESTED BY OTHER STATES.

1 (5) THE DEPARTMENT SHALL NOT BRING A CRIMINAL ACTION AGAINST
2 A PERSON FOR FAILURE TO REPORT OR TO REMIT ANY TAX COVERED BY THE
3 AGREEMENT BEFORE OR DURING THE LOOKBACK PERIOD IF THE FACTS
4 ESTABLISHED BY THE DEPARTMENT ARE NOT MATERIALLY DIFFERENT FROM
5 THE FACTS DISCLOSED BY THE PERSON TO THE DEPARTMENT.

6 (6) A VOLUNTARY DISCLOSURE AGREEMENT IS EFFECTIVE WHEN
7 SIGNED BY THE PERSON SUBJECT TO THE AGREEMENT, OR HIS, HER, OR
8 ITS LAWFUL REPRESENTATIVE, AND RETURNED TO THE DEPARTMENT WITHIN
9 THE TIME PERIOD SPECIFIED IN THE AGREEMENT. THE DEPARTMENT SHALL
10 ONLY PROVIDE THE RELIEF SPECIFIED IN THE EXECUTED AGREEMENT. ANY
11 VERBAL OR WRITTEN COMMUNICATION BY THE DEPARTMENT BEFORE THE
12 EFFECTIVE DATE OF THE AGREEMENT SHALL NOT AFFORD ANY PENALTY
13 WAIVER, LIMITED LOOKBACK PERIOD, OR OTHER BENEFIT OTHERWISE
14 AVAILABLE UNDER THIS SECTION.

15 (7) A MATERIAL MISREPRESENTATION OF THE FACT BY AN APPLICANT
16 RELATING TO THE APPLICANT'S CURRENT ACTIVITY IN THIS STATE
17 RENDERS AN AGREEMENT NULL AND VOID AND OF NO EFFECT. A CHANGE IN
18 THE ACTIVITIES OR OPERATIONS OF A PERSON AFTER THE EFFECTIVE DATE
19 OF THE AGREEMENT IS NOT A MATERIAL MISREPRESENTATION OF FACT AND
20 SHALL NOT AFFECT THE AGREEMENT'S VALIDITY.

21 (8) THE DEPARTMENT MAY AUDIT ANY OF THE TAXES COVERED BY THE
22 AGREEMENT WITHIN THE LOOKBACK PERIOD OR IN ANY PRIOR PERIOD IF,
23 IN THE DEPARTMENT'S OPINION, AN AUDIT OF A PRIOR PERIOD IS NECES-
24 SARY TO DETERMINE THE PERSON'S TAX LIABILITY FOR THE TAX PERIODS
25 WITHIN THE LOOKBACK PERIOD OR TO DETERMINE ANOTHER PERSON'S TAX
26 LIABILITY.

1 (9) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO ALLOW OR
2 PERMIT UNJUST ENRICHMENT AS THAT TERM IS DEFINED IN SUBSECTION
3 (10). ANY TAX COLLECTED OR WITHHELD FROM ANOTHER PERSON BY AN
4 APPLICANT SHALL BE REMITTED TO THE DEPARTMENT WITHOUT RESPECT TO
5 WHETHER IT WAS COLLECTED DURING OR BEFORE THE LOOKBACK PERIOD.

6 (10) AS USED IN THIS SECTION:

7 (A) "LOOKBACK PERIOD" MEANS 1 OR MORE OF THE FOLLOWING:

8 (i) THE MOST RECENT 48-MONTH PERIOD AS DETERMINED BY THE
9 DEPARTMENT OR THE FIRST DATE THE PERSON SUBJECT TO AN AGREEMENT
10 UNDER THIS SECTION BEGAN DOING BUSINESS IN THE STATE IF LESS THAN
11 48 MONTHS.

12 (ii) FOR SINGLE BUSINESS TAXES LEVIED UNDER THE SINGLE BUSI-
13 NESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145, THE LOOKBACK
14 PERIOD SHALL BE THE 4 MOST RECENT COMPLETED FISCAL OR CALENDAR
15 YEARS OVER A 48-MONTH PERIOD OR THE FIRST DATE THE PERSON SUBJECT
16 TO AN AGREEMENT UNDER THIS SECTION BEGAN DOING BUSINESS IN THIS
17 STATE IF LESS THAN 48 MONTHS.

18 (iii) IF THERE IS DOUBT AS TO LIABILITY FOR THE TAX DURING
19 THE LOOKBACK PERIOD, ANOTHER PERIOD AS DETERMINED BY THE COMMIS-
20 SIONER TO BE IN THE BEST INTEREST OF THIS STATE AND TO PRESERVE
21 EQUITABLE AND FAIR ADMINISTRATION OF TAXES.

22 (B) "NONFILER" FOR A PARTICULAR TAX IS A PERSON THAT HAS
23 NEVER FILED A RETURN FOR THE PARTICULAR TAX BEING DISCLOSED.

24 (C) "PERSON" MEANS AN INDIVIDUAL, FIRM, BANK, FINANCIAL
25 INSTITUTION, LIMITED PARTNERSHIP, COPARTNERSHIP, PARTNERSHIP,
26 JOINT VENTURE, ASSOCIATION, CORPORATION, LIMITED LIABILITY

1 COMPANY, LIMITED LIABILITY PARTNERSHIP, RECEIVER, ESTATE, TRUST,
2 OR ANY OTHER GROUP OR COMBINATION ACTING AS A UNIT.

3 (D) "PREVIOUS CONTACT" MEANS ANY NOTIFICATION OF AN IMPEND-
4 ING AUDIT PURSUANT TO SECTION 21(1), REVIEW, OR ANY TYPE OF
5 NOTICE OR ASSESSMENT. PREVIOUS CONTACT ALSO INCLUDES LETTERS OF
6 INQUIRY PURSUANT TO SECTION 21(2)(A), OTHER WRITTEN INQUIRIES OR
7 A SUBPOENA FROM THE DEPARTMENT, AND ANY PRIOR REGISTRATION FOR OR
8 THE FILING OF RETURNS FOR ANY TAX FOR WHICH A PERSON IS SEEKING A
9 VOLUNTARY DISCLOSURE AGREEMENT.

10 (E) "UNJUST ENRICHMENT" INCLUDES THE WITHHOLDING OF INCOME
11 TAX UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO
12 206.532, AND THE COLLECTION OF ANY OTHER TAX ADMINISTERED BY THIS
13 ACT THAT HAS NOT BEEN REMITTED TO THE DEPARTMENT.

14 (F) "VOLUNTARY DISCLOSURE AGREEMENT" OR "AGREEMENT" MEANS
15 THE ENTIRETY OF THE WRITTEN AGREEMENT BETWEEN A PERSON AND THE
16 DEPARTMENT.